

REMARKS

Claims 1, 6-9, 12, 13 and 15-17 are pending and under examination.

Rejections Under 35 U.S.C. § 102

The rejection of claims 1, 6-9, 12, 13 and 15-17 under 35 U.S.C. § 102(b) as allegedly anticipated by Motitschke et al., U.S. Patent No. 5,006,337, is respectfully traversed. Applicants respectfully submit that the claimed compositions are novel over Motitschke et al.

In the Office Action, Motitschke et al. is alleged to describe a composition comprising a CO₂ extract of hops used in a tablet, capsule or cream. However, Applicants respectfully disagree with the assertion in the Office Action that Motitschke et al. describes a CO₂ extract of hops. At best, Motitschke et al. appears to describe spent grains' extract obtained by extraction of spent brewers' grains with liquid CO₂ or N₂O (column 3, lines 9-31). Motitschke et al. discloses that spent grains are "obtained before the addition of hops" (column 1, lines 22-25; column 3, lines 25-27). Therefore, the "CO₂ extracts" described by Motitschke et al. do not contain hops. Absent a teaching of the claimed composition containing a CO₂ extract of hops, Matitschke et al. cannot anticipate the claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The rejection of claims 1, 6-9, 12, 13 and 15-17 under 35 U.S.C. § 102(b) as allegedly anticipated by Kuhrts, U.S. patent application publication 2002/0086062, is respectfully traversed. Applicants respectfully submit that the claims are novel over Kuhrts.

Kuhrts was published on July 4, 2002. The subject application was filed June 20, 2001, before the publication date of Kuhrts. Accordingly, Applicants respectfully submit that Kurhts does not qualify as prior art under § 102(b). Furthermore, the Kuhrts application was filed October 30, 2001, after the June 20, 2001, filing date of the subject application. Applicants therefore respectfully submit that Kurhts does not qualify as prior art under 35 U.S.C. § 102(e).

Applicants note that the Kuhrts publication corresponds to application serial No. 10/000,517, which is a continuation-in-part of application serial No. 09/495,556 (the Kuhrts '556

application), filed on February 1, 2000. Enclosed for the Examiner's convenience is a copy of patent application publication 2002/0098239, which is the publication corresponding to the Kuhrts '556 application. Although the filing date of the Kuhrts '556 application, February 1, 2000, is prior to the filing date of the subject application, the Kuhrts '556 application contains no disclosure of hops. Therefore, the earliest priority date for any disclosure related to hops is October 30, 2001. As noted above, this earliest priority date is after the June 20, 2001, priority date of the subject application. Accordingly, the cited Kuhrts publication cannot serve as prior art under 35 U.S.C. § 102(e).

Applicants respectfully submit that Kuhrts cannot serve as prior art under 35 U.S.C. § 102(b) or 102(e). Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejections Under 35 U.S.C. § 103

The rejection of claims 1, 6-9, 12, 13 and 15-17 under 35 U.S.C. § 103 as allegedly obvious over Motitschke et al., *supra*, is respectfully traversed. Applicants respectfully submit that the claimed compositions are unobvious over Motitschke et al.

As discussed above, Motitschke et al. does not teach or suggest a CO₂ extract of hops. Absent such a teaching or suggestion, Motitschke et al. cannot render the claimed compositions obvious. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The rejection of claims 1, 6-9, 12, 13 and 15-17 under 35 U.S.C. § 103 as allegedly obvious over Kuhrts, *supra*, is respectfully traversed. As discussed above, Kuhrts cannot serve as prior art under 35 U.S.C. § 102(b) or 102(e) and therefore cannot be considered to render the claimed compositions obvious. Accordingly, Applicants respectfully request that this rejection be withdrawn.

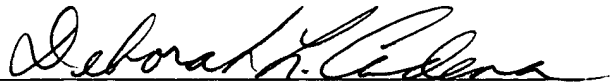
Inventors: Babish and Howell
Serial No.: 09/885,721
Filed: June 20, 2001
Page 6

CONCLUSION

In light of the amendments and remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent if there are any questions.

Respectfully submitted,

Date: February 10, 2004



Deborah L. Cadena
Registration No. 44.048
Telephone: (858) 535-9001
Facsimile: (858) 535-8949

McDERMOTT, WILL & EMERY
4370 La Jolla Village Drive
Suite 700
San Diego, California 92122